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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 9th June, 1953

S.R.O. 1200.—Whereas the election of Shri Hazari Lal, as a member of the Legislative Assembly of the State of Rajasthan, from the Kotputli constituency of that Assembly, has been called in question by an Election Petition (No. 3 of 1952 before the Commission) duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Ram Singh, s/o Tarasingh, Jagdish Hotel, Murza Ismail Road, Jaipur;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal

IN THE ELECTION TRIBUNAL, JAIPUR

Election Petition No. 1 of 1952

Ram Singh—*Petitioner*

Vs.

Shri Hazari Lal and others—*Respondents*

PRESENT—

The Hon'ble Mr. Justice K. K. Sharma—*Chairman*Mr. A. N. Kaul—*Member*,Mr. P. L. Shome—*Member*.

Mr. Sharma Ramesh Chandra, for the petitioner

Mr. Chund Lal Agarwal, for the respondent, Shri Hazari Lal.

ORDER

Dated the 9th May, 1953

This is a petition by Shri Ram Singh a candidate for election to the Rajasthan Legislative Assembly from the Kotputli Constituency during the last General Elections, whose nomination paper was rejected by the Returning Officer, Kotputli Constituency. The ground on which the nomination paper was rejected was that at serial No. 8 of the nomination paper the page number of the entry was given as 345, while in the certified copy produced by the candidate page number was given as 344 which did not tally with that given against the serial number. The Returning Officer thought that it made the entry doubtful, and consequently the nomination paper was rejected. Shri Shambhu Dayal, the Returning Officer,

Shri Hazari Lal, the successful candidate, Pt. Hardayal, Shri Hanuman Saran, Shri Ram Pratap Yadav, and Raja Sahib Sardar Singhji of Khetri have been made respondents. Pt. Hardayal, Shri Hanuman Saran, Shri Ram Pratap Yadav, and Raja Sahib Sardar Singhji of Khetri, respondents Nos. 3, 4, 5, and 6 respectively, whose nomination papers were accepted, withdrew their candidature within the prescribed time with the result that Shri Hazari Lal, respondent No. 2, was left alone in the field, and was returned unopposed. Shri Hazari Lal is, therefore, the principal respondent in this case.

The petitioner's case is that he was a voter in the Jaipur City "C" Constituency, and his name was duly recorded in the Electoral Roll. He filled up item No. 8 of the nomination paper according to the description in the Electoral Roll, and the discrepancy in the paging of the official and attested copy of the Electoral Roll was not, in any way, due to the petitioner's fault, but was due to either the copying agency or the Government Press. He further says that the same was, at the most, a technical mistake which, in view of section 36 (4) of the Representation of the People Act, 1951, (hereinafter to be referred to as the Act) could not have been a reasonable and substantial ground for rejecting the petitioner's nomination paper. According to him, his nomination paper was improperly rejected, and this improper rejection of the nomination paper materially affected the result of the election. He has prayed for a declaration that the election of the Kotputli Constituency of the Rajasthan Legislative Assembly be declared as null and void and any further relief, to which the petitioner might be entitled, be awarded in his favour.

All the respondents were served with summonses, but only respondent No. 2, who will hereinafter be referred to as the contesting respondent, filed his written statement. It has been pleaded by the contesting respondent that the nomination paper of the petitioner was properly rejected as the defect was a very vital one and of a substantial character, and did not at all fall within the purview of section 36(4) of the Act. He says that in any case the result of the election has not at all been affected by the rejection of the nomination paper of the petitioner. In his additional pleas, he has taken various objections, which would be apparent from the issues framed in the case. They are as follows:—

1. Whether the petitioner's nomination paper was improperly rejected on the ground that the page number of the entry given at serial No. 8 differed from the number of the page given in the certified copy produced by the petitioner?
2. Whether the result of the election has been materially affected by the rejection of the petitioner's nomination paper?
3. Whether the omission to give the description of the ward in which the name of the petitioner was entered in the Electoral Roll invalidated his nomination paper?
4. Whether the petitioner was not a registered voter in the Electoral Roll of the Jaipur City "C" Constituency? If so, what is its effect on the election petition?
5. Whether the petitioner was under 25 years of age at the time of the filing of his nomination paper, and as such not qualified to stand as a candidate for the election? If so, what is its effect on the election petition?
6. Whether the entry at No. 174, Station Road, Jaipur City "C" Constituency, Shahar Garbi Ward, did not pertain to the petitioner? If so, what is its effect on the election petition?
7. Whether the correction of the age of the elector No. 174, Station Road, Jaipur City "C" Constituency, Shahar Garbi Ward, on the Electoral Roll by the Electoral Registration Officer, Jaipur, after the filing of the petitioner's nomination paper was invalid? If so, what is its effect upon the election petition?
8. Whether no permission was obtained by the petitioner for adopting the symbol of his first preference in the nomination paper? If so, what is its effect upon the election petition?
9. Whether the petitioner withdrew his deposit before the filing of the election petition and if so, what is its effect upon the petition?
10. Whether the signatures of the seconder Rahama were obtained on the nomination paper of the petitioner by telling him that the nomination paper was on behalf of a Congress candidate? If so, what is its effect upon the election petition?

We will take up issues Nos. 1 and 2 in the end, and shall deal first with the remaining issues.

Issue No. 3.—The argument of the learned counsel for the contesting respondent on this issue was that the petitioner did not give the description of the ward in which his name was entered in the Electoral Roll, and, therefore, apart from the ground on which his nomination paper was rejected by the Returning Officer the nomination paper was invalid on this ground alone. The entry made against item No. 8 by the petitioner in the nomination paper was as follows:—

"S. No. 174, Jaipur City 'C' Station Road, Page No. 345".

It was argued that Jaipur City "C" Constituency was divided into the following four wards:—

1. Chowkri Modikhana,
2. Chowkri Vishweshwarji,
3. Chowkri Top Khana Desh, and
4. Chowkri Hawali Shahar Garbi.

The petitioner did not give the name of any of these four wards in item No. 8 of the nomination paper. All that he mentioned was "Serial No. 174, Jaipur City 'C' Constituency, Station Road page No. 345." Serial No. 174 occurred in all the four wards of the Constituency. Further even each of the four wards itself had more than one Electoral Roll, and there were as many as three Electoral Rolls for each of the wards. Thus there were in all 12 Electoral Rolls for Jaipur City "C" Constituency and, in all of them, Serial No. 174 occurred. Without the name of the Ward in the nomination paper it was very difficult, if not impossible, to find out in which of the Electoral Rolls the serial number given by the petitioner was to be found. It was further argued that the petitioner instead of giving the name of the ward or the correct page, which was given in print in the Electoral Roll, chose to give the embossed number of the leaf, which too was not the same in all the Electoral Rolls. By adopting such a dubious method the petitioner rendered it very difficult for the Returning Officer to check the entry in order to satisfy himself about the identity of the petitioner. It was, therefore, argued that there was no compliance with the rules about the filing in of the nomination papers. Reference was made to foot-note (6) of the form of nomination paper in Schedule II of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951 (hereinafter to be referred to as the Rules). The following decisions of the Election Tribunals, formed under the Act, as well as of the Election Commissioners under the old Government of India Acts were also referred to:—

1. Election Tribunal North Arcot, Vellore, P. N. Balasubramanian *vs.* C. R. Narasimhan and others (Election Petition No. 56 of 1952), published in the Gazette of India, Extraordinary, Part I—Section 1, No. 471, dated November 20, 1952, page 2457.
2. Election Tribunal, Hazaribagh. Rameshwar Prasad Singh *vs.* Krishna Gopal Das and others (Election petition No. 191 of 1952), published in the Gazette of India, Extraordinary, Part II—Section 3, No. 55, dated March 4, 1953, page 680.
3. Election Tribunal, Patiala, Shri Mathra Das and others *vs.* S. Dara Singh and others. (Election Petition No. 70 of 1952), published in the Gazette of India, Part II—Section 3, No. 69, dated March 21, 1953; page 365.
- *4. United Provinces Legislative Council, Saharanpore Dist. Non-Mohammadan Rural. Pandit Brij Nandan Lal *vs.* Pandit Moti Lal Bhargava, Jagat Narain's Indian Election Petitions Volume IV, page 96.
5. Punjab Legislative Council, Punjab North East Towns Case (N.M.), Rai Bahadur Panna Lal *vs.* Lala Mohan Lal, and Central Provinces Legislative Council, Raipur North (N.M.R.). Badri Prasad *vs.* Sheodas Daga. Jagat Narain's Indian Election Petitions, Volume II, pages 143 and 146 respectively.
6. Hammond's Election Cases, page 77.
7. Gondia General Rural Constituency, 1937 (C.P. Legislative Assembly) Malhar Rao *v.* Vishnupant Sen & Poddar's Indian Election Cases, 1951 Edition, page 326.

On behalf of the petitioner it was argued that the name of the Ward would not have been of any assistance in the present case because in each ward there were three Electoral Rolls and all of them had Serial No. 174. There were thus

three Electoral Rolls for Jaipur City Hawali Shahar Garbi, in each of which S. No. 174 occurred. These three Electoral rolls had no distinguishing title, heading or any other description, as, for example, 1, 2, 3; A, B, C; main and supplementary, or so on, so that one Electoral Roll of the same Ward might be easily distinguished from the other. The petitioner, therefore, chose to give the number of the embossed page, which alone could distinguish the same serial No. of one Electoral Roll from that of the other. It was further argued that the direction given by the footnote (6) of the form of nomination paper was not mandatory, and it has been given only with a view that the candidate might be identified. If the candidate could not be identified by giving of the particular part of the Constituency it was no use giving the name of the part. The petitioner, therefore, substantially complied with section 33 of the Act read with Rule 4 of the Rules by giving embossed leaf number in item No. 8. In order to support the argument that the omission to give the name of the part in the nomination paper, item No. 8, was not a substantial defect so as to warrant the rejection of the nomination paper, reliance was placed upon the following decisions:—

1. Election Tribunal, Delhi. Ch. Surat Singh v. Shri Jang Bahadur Singh and others (Election Petition No. 9 of 1952), published in the *Gazette of India, Extraordinary*, Part II—Section 3, No. 50, dated February 27, 1953, page 567
2. Election Tribunal, West Bengal. Tikaram Sharma, vs. Lalit Bahadur Kharga and others (Election Petition No. 27 of 1952), published in the *Gazette of India, Extraordinary*, Part I—Section 1, No. 430, dated October 15, 1952, page 2285

We have considered the arguments of the learned counsel for both the parties on this issue, and have also gone through the decisions relied on by each party. The argument of the learned counsel for the contesting respondent is that according to foot-note (6) to the form of the nomination paper given in Schedule II of the Rules, where the electoral roll is sub-divided into parts and separate serial numbers are assigned to the electors entered in each part, a description of the part in which the name of the person concerned is entered must also be given in items Nos. 8, 10, and 14. The contention is that, as Jaipur City "C" Constituency was sub-divided into four parts, out of which Hawali Shahar Garbi was one, and separate serial numbers were assigned to the electors entered in each part, it was incumbent upon the petitioner to give the name of that part of the electoral roll in which his name appeared. As the petitioner says that his name appeared at No. 174 in the electoral roll of Hawali Shahar Garbi, the petitioner failed to comply with the mandatory provision, according to which he ought to have stated against item No. 8 in the nomination paper that his serial No. 174 was in Jaipur City "C" Constituency Hawali Shahar Garbi. By omitting to give the description of the part, the petitioner made the task of the Returning Officer very difficult in tracing out the serial number given by the petitioner as it occurred in all the 12 parts of the Electoral Roll relating to Jaipur City "C" Constituency. We find that it is true that Jaipur City "C" Constituency was divided into at least three parts, one of which was Hawali Shahar Garbi. It is also true that three electoral rolls were prepared for each of these parts. Thus there were 9 electoral rolls for Jaipur City "C" Constituency. It is also a fact that in each of these 9 electoral rolls, serial No. 174 appears. If, therefore, the petitioner had not given any further particulars, excepting "Jaipur City 'C' Constituency", it would have been very difficult for the Returning Officer to find out the appropriate serial number as serial No. 174 appeared in all the 9 electoral rolls of Jaipur City "C" Constituency. We shall however, examine the question whether the petitioner has given any further particulars in item No. 8 in his nomination paper, and if so, whether it made the task of the Returning Officer easier in finding out the appropriate serial number, after we have considered whether the provisions of foot-note (6) in the nomination paper in Schedule II are mandatory or only directory.

We have examined the language of foot-note (6) and have also considered carefully the decisions cited on behalf of each party. In foot-note (6), instead of the word "shall", which is generally used in legislation when a provision is made mandatory, the word "must" is used. The reason behind the use of this word seems to be that it was considered not to be a mandate but only a direction, although an important direction.

Coming to the decisions cited by each party, we do not find that in any of them it was held that the direction was mandatory. In some, it was held that the provision of note (6) was only directory and, if substantial compliance was made by a candidate, merely because the name of the part or the sub-division was omitted the nomination paper could not be rejected. In some, no decision

was given as to the mandatory or directory nature of the note, and the Tribunal or the Election Commissioner, as the case was, held that substantial compliance was not made. In the case of Rameshwar Prasad Singh vs. Krishna Gopal Das and others (1), cited on behalf of the contesting respondent, it was held, under the circumstances of the case, that the omission of the name of the village in column No. 8 was a defect of substantial character and not a technical defect. No opinion was given as to whether the provision was directory or mandatory. But from the fact that the nomination paper was held to be properly rejected, as the defect was considered to be of a substantial character, it may be presumed that the Election Tribunal thought that the provision was only directory. In the case of Shri Mathra Das and others v. S. Dara Singh and others (2) also cited on behalf of the contesting respondent, the name of the village was not given in item No. 8. There were a number of villages in Halqu Patwar Amloh. A separate election roll was prepared for each of these villages. It was held that note 6 in the form of the nomination paper providing that "a description of the part in which the name of the person concerned is entered must be given" is only directory, and that if it were intended to be mandatory the words "shall be" would have been used. In the case of Pandit Brij Nandan Lal vs. Pandit Lal Bhargava (3), no view was expressed whether the provision in Schedule 3 of the United Provinces Electoral Rules, which required the name of the sub-division to be entered in the nomination paper, was mandatory or directory. The only thing that was said was that it may be either mandatory or directory. The defect was considered to be substantial and, therefore, the nomination paper was held to be properly rejected. In the case of Rai Bahadur Panna Lal vs. Lala Mohan Lal (4), relied on by the learned counsel for the contesting respondent, no view was expressed whether similar provision in the Punjab Electoral Rules was mandatory or directory. The decision turned on the view that there was not a substantial compliance. In the case of Badri Prasad v. Sheodas Daga (5), also relied on by the learned counsel for the contesting respondent, it was not held definitely whether the provision was mandatory or directory. The omission was considered to be a highly material one in the case, and the decision turned upon that ground. In the case of Tikaram Sharma vs. Lalit Bahadur Khargra and others (6), relied on by the learned counsel for the petitioner, the provision was not held to be mandatory, and in the circumstances of the case it was held that there was substantial compliance, and that the nomination paper was consequently improperly rejected. In the case of Ch. Surat Singh vs. Shri Jang Bahadur Singh & others (7) also relied upon by the learned counsel for the petitioner, the provision was not held to be mandatory, and it was held that the omission was only trivial, and the nomination paper was improperly rejected. In the case of Malhar Rao v. Vishnupant (8) relied upon by the learned counsel for the contesting respondent, it was held that the omission to enter the name of the sub-division in the nomination paper was a failure to comply with the material provisions of rule 16.

The consensus of opinion, therefore, is that the provisions of the note are only directory and not mandatory. From the language of the note also, the same seems to be the intention of the framers of the note.

Now coming to the facts of the cases relied on by the learned counsel of each party, we find that the facts of each of those cases are more or less distinguishable from the facts of the present case. In the case of Pandit Brij Nandan Lal vs. Pandit Moti Lal Bhargava (3) the electoral roll was divided into 19 sub-divisions, and separate serial numbers were assigned to electors and entered in each sub-division. It does not appear whether any other particulars were given along with the serial number, and in the circumstances of the case, it cannot be said that the appropriate serial number could be easily found out by the Returning Officer. In the case of Rai Bahadur Panna Lal vs. Lala Mohan Lal (4),

(1) *Gazette of India, Extraordinary*, Part II—Section 3, No. 55, dated March 4th, 1953, page 680.

(2) *Gazette of India*, Part II—Section 3, No. 69, dated March 21, 1953, page 865.

(3) 4 Jagat Narain 96.

(4) 2 Jagat Narain 143.

(5) 2 Jagat Narain 146.

(6) *Gazette of India, Extraordinary*, Part I—Section 1, No. 430, dated October 15, 1952, page 2285.

(7) *Gazette of India, Extraordinary*, Part II—Section 3, No. 50, dated February 27, 1953, page 567.

(8) Sen & Poddar's Indian Election Cases, page 326.

the only entry made in the nomination paper was "549 (Ward No. 5)". There were 13 sub-divisions in the Constituency, and several of them had ward No. 5. It was argued that the omission to give the name of the sub-division was not material in the circumstances of the case, as the serial number 549, which was given by the candidate in question, was to be found only in the Municipality of Ambala, which too had ward No. 5. It was held that it was not the duty of the Returning Officer to search every sub-division of the Electoral Roll to find out if this was a correct entry, and that there was not a substantial compliance with the directions. In the case of *Badri Prasad v. Sheodas Daga* (5), the Constituency in question was Chhatisgarh Urban Constituency, which was situated in the Raipur, Bilaspur and Durg districts. In the Electoral Roll of each of these districts, it appears that serial number 119 given by the candidate occurred. Under the circumstances it was held that there was substantial compliance with the provision. In the case of *P. N. Balasubramanian vs. C. R. Narasimhan and others* (9) the name of the candidate was not entered in the Electoral Roll until the date of the nomination paper, but was entered last of all on an application before the date of scrutiny. No serial number was, therefore, at all given in the nomination paper. It was held that the fact that the name was entered after the date of the nomination paper would not validate the nomination paper. This decision has no application to the point before us. In *Rameshwar Prasad Singh v. Krishna Gopal Das and others* (1) there were 400 to 500 villages in the constituency, and for each of them there was an electoral roll, and serial No. 10, which was given by the candidate in question in his nomination paper occurred in each of the villages. Under those circumstances it was held that the omission was substantial. In the case of *Shri Mathra Das and others vs. S. Dara Singh and others* (2), Halqa Patwar Amloh consisted of four villages, that is Amloh, Mangarh, Khanvan and Aladatpur. A separate electoral roll was prepared for each of these villages. The candidate gave against his serial number the name of the Halqa and not of the village. It was considered that the omission to give the name of the village was not fatal, and that the candidate in question had substantially complied with the directory provision of note (6). Almost all the decisions cited on behalf of the contesting respondent under the old Government of India Acts were considered in the case. An important decision under the old Government of India Act, 1935, in the case of *E. Few v. C. E. Gibbon* [Sen and Poddar's Indian Election Cases (1935-51) page 66] was noticed, and the view held therein was accepted. In the case of *Tikaram Sharma v. Lalit Bahadur Kharga and others* (6), cited by the learned counsel for the petitioner, the constituency in question was Kalimpong constituency in the State of West Bengal, and the Electoral Roll was sub-divided according to village and municipal wards. There were numerous sub-divisions, but each sub-division was named after the village of the municipal ward. On the cover page of the volume containing the electoral rolls of the entire Kalimpong Constituency, there appeared the following entry:—

"Part A—Original roll.

Part E—Supplementary roll.

Part E—Further addenda and corrigenda."

The candidate gave along with his serial No. 555 in entry 8, the following particulars only.—

"Kalimpong Municipality (Ward No. VI)". He did not specify whether the number was to be found in Part A—Original roll, or Part B—Supplementary roll. Part A had 572 electors, and Part B only 131. It was held that under the circumstances it would not have been difficult to trace out the appropriate serial number, and the nomination paper was consequently improperly rejected. In the case of *Ch. Surat Singh v. Shri Jang Bahadur Singh & others* (7), the Kingsway Camp Constituency was divided into two parts called the "Civil Lines Police Station" and the "Subzimdi Police Station". Neither of these two sub-divisions was given along with the serial number in item No. 10 relating to the

(5) 2 Jagat Narain 146.

(9) *Gazette of India, Extraordinary*, Part I—Section 1, No. 471, dated November 20, 1952, Page 2457.

(1) *Gazette of India, Extraordinary*, Part II—Section 3, No. 55, dated March 4th, 1953, page 680.

(2) *Gazette of India*, Part II—Section 3, No. 69, dated March 21, 1953, page 865.

(6) *Gazette of India, Extraordinary*, Part I—Section 1, No. 430, dated October 15, 1952, page 2285.

(7) *Gazette of India, Extraordinary*, Part II—Section 3, No. 50, dated February 27, 1953, page 567.

proposer. It was held that the object of the note was that there should be no difficulty about the identity of the candidate, his proposer or seconder, and because the identity of the proposer was not in doubt, the omission was only trivial, and did not invalidate the nomination paper.

On a survey of all these authorities, we find that if the identity of the candidate in question is not in doubt, the fact that the name or sub-division was not given along with the serial number would not invalidate the nomination paper. Even if there is any doubt about the identity, it can be cleared by the Returning Officer holding a summary enquiry under section 36 of the Act. We are very much in agreement with the observations of the Election Commissioners in the case of *E. Few v. C. E. Gibbon* [Sen & Poddar's Indian Election Cases (1935-51) page 66], which we quote in *extenso*. They find place at page 72:—

"It will be readily seen that in none of these cases cited before us has it been held that the rule requiring the serial number *plus* the name of the sub-division is mandatory. The decisions have all hinged on the finding of fact whether or not there has been a substantial compliance with the rule. The object of the information given in the form, as has been pointed out over and over again, is to enable the returning officer and others interested to test the identity and eligibility of a candidate. The name of the sub-division does not throw any light on these important points. It merely aids the returning officer in the mechanical operation of locating a name in the electoral roll. If in spite of the total omission to describe the sub-division or inadequate description, a name in a certain roll can be easily located, it must be held in that case that there has been a substantial compliance with the rule and the nomination would be good. If on the other hand the information is so meagre as to entail a laborious search in the roll, it must be found that there has not been a substantial compliance and the nomination would be bad. We are unable to regard the returning officer as an authority not prepared to take any pains at all and bent upon rejecting the nomination of qualified candidates for immaterial omissions and errors in the filling up of forms thus depriving entire electorates of their substantial right to elect persons of their choice. We would like to emphasise that the returning officer has been given a power to make a summary enquiry for the purpose of deciding objections which may be made to any nomination. This provision suggests that when carrying out the scrutiny of nominations the returning officer is performing a judicial function. It follows that he should conform to judicial standards, and should not mechanically reject nominations on account of unsubstantial irregularities. He should not regard the provision authorising him to hold a summary enquiry a dead letter. If an obscurity can be cleared up there and then by a summary enquiry he should not shrink from holding the enquiry."

These observations of the Election Commissioners met with approval in the recent case of *Tikaram Sharma vs. Lalit Bahadur Kharga* (10) decided by the Election Tribunal of West Bengal, referred to earlier in this judgment. We are, therefore, of the view that if the identity of the candidate is not in doubt, mere omission to state the part of the Electoral Roll, in which the candidate's name is entered, could not make the nomination paper invalid.

Coming to the fact of the present case, there is no doubt that there were at least nine Electoral Rolls in Jaipur City "C" Constituency, in each of which serial No. 174 occurred, and if, therefore, the petitioner had given only serial No. 174, it would certainly have been a task for the Returning Officer to find out the appropriate serial number. However, along with the serial number the petitioner mentioned "Station Road", and gave the number of the embossed leaf as 345. In the present case, even the sub-division Hawali Shahar Garbi had three electoral rolls, and in each of them serial No. 174 occurred. These electoral rolls had no particular nomenclature given to them, as, for example, 1, 2, 3; A, B, C, or main, supplementary etc. If, therefore, the petitioner had mentioned Hawali Shahar Garbi along with the serial number, even then it could not be known in which of the three electoral rolls pertaining to Hawali Shahar Garbi the serial number given by the petitioner was to be found. The Returning Officer would have had to refer to at least three electoral rolls. It was argued that pages were numbered in print, and the petitioner could have mentioned those printed pages. This too would not have improved matters, because page No. 4 in print occurred

in all the electoral rolls pertaining to Jaipur City "C" Constituency which have been produced in this case. In the three electoral rolls pertaining to Hawali Shahar Garbi serial number 174 found place on the printed page 4. In the biggest electoral roll of Chowkri Modi Khana too serial No. 174 found place at page 4. In the other two electoral rolls also pertaining to Chowkri Modi Khana, which by their size can be said to be supplementary electoral rolls, serial No. 174 found place at printed page 4. In all the three electoral rolls of Chowkri Bisheshwarji, serial No. 174 found place at printed page 4. We have not got the electoral roll of Chowkri Topkhana Dosh before us, and so we cannot say on what printed page of the electoral roll of the said Chowkri serial No. 174 occurred. It is, however, clear that at least in the 9 electoral rolls including the three of Hawali Shahar Garbi, serial No. 174 occurred at the printed page 4. It was, therefore, no use giving the printed page number, and it would not have in the least helped the Returning Officer in finding out the serial number given in the nomination paper very easily. The particulars, which were given by the petitioner cannot be said to be in any way less helpful for finding out the appropriate serial number than if he had given the name of the particular part of the Jaipur City "C" Constituency in which, according to him, his serial number occurred. Station Road is, beyond doubt, in Hawali Shahar Garbi, as would appear from the electoral rolls, and the mention of the Station Road along with the serial number should have indicated to the Returning Officer that the number given in the nomination paper was to be found in any of the three electoral rolls pertaining to Hawali Shahar Garbi. The same would have been the case if the petitioner had mentioned Hawali Shahar Garbi along with the serial number. What was, therefore, the particular which would have obviated the necessity of referring to more than one electoral roll to the Returning Officer. Two sets of electoral rolls have been produced before us, one by the petitioner, which are nine in number, and three of which pertain to Chowkri Modikhana, 3 to Chowkri Visheshwarji, and 3 to Hawali Shahar Garbi, and the other by Daulat Ram, Clerk of the City Magistrate's Office, Jaipur, who was the Electoral Registration Officer at the time of the last General Elections. This also consists of three electoral rolls of Hawali Shahar Garbi, the first and the biggest of which begins from serial No. 501. From a perusal of the electoral rolls of both these two sets, it is clear that it is only the embossed page leaf which is not repeated. The three electoral rolls of Hawali Shahar Garbi bear the continuous embossed leaf numbers. Of the three electoral rolls of Hawali Shahar Garbi one which is the biggest, contains the names of 12,599 electors. This appears to be the original list. Then there are two other rolls which are much smaller in size, one containing the names of 891 electors and the other containing the names of 285 electors. The pages in print on the first are from 1 to 252. The pages in print on the other two are from 1 to 18 and 1 to 6 respectively. The embossed leaf numbers on the page of the first i.e., the biggest, electoral roll of Hawali Shahar Garbi produced by the petitioner are from 209 to 334. The embossed leaf numbers on the other two are from 335 to 343 and 344 to 346 respectively. This is with reference to the electoral roll, Ex. P. 4, filed by the petitioner. In the electoral roll filed by the witness Daulat Ram also the first, that is the biggest, electoral roll contains the names of 12,599 electors and its last page in print is 252 as in the case of the electoral roll filed by the petitioner. This electoral roll does not contain the first 10 pages in print and the first printed page is 14 of which the embossed leaf number is 213. The last embossed leaf number on this electoral roll is 333. The other two electoral rolls, which from their size may be taken to be supplementary are like the two such electoral rolls filed by the petitioner. The only difference is that the embossed leaf number on the printed first page of the bigger of these two electoral rolls is 334 and the last is 342. In the smaller of these two, the embossed leaf number is 343 on its first printed page, and on the third printed page it is 345. Thus on a perusal of the electoral rolls of both these two sets, it is clear that embossed leaf numbers are continuous from the first to the last, and the embossed leaf number in any of these three electoral rolls is not repeated, in any other. Thus by giving the embossed leaf number the Returning Officer's task was very much facilitated, as it obviated the necessity of referring to more than one electoral roll. We may say that in the electoral rolls of Chowkri Modi Khana and Visheshwarji, which are also before us, the embossed leaf numbers are different from the embossed leaf numbers given in the electoral rolls of Hawali Shahar Garbi. Thus the Returning Officer had to find out only the embossed leaf number, and there he could have found the appropriate serial number without any necessity of looking into any other electoral roll. The petitioner was justified in thinking that if he gave the embossed leaf number, he would make the task of the Returning Officer very easy in tracing out the appropriate serial number. This is what the petitioner has said in his statement, and to our mind his explanation is perfectly correct. It is unfortunate that the electoral roll from which the certified copy Ex. R. 1/1 (a) was obtained

by the petitioner for presentation before the Returning Officer contains serial No. 174 at embossed leaf No. 344; but that was no fault of the petitioner. This may be due either to repeating of one of the leaf numbers in that electoral roll or the omission of one of the leaf numbers in the electoral roll produced by the petitioner. The difference was, however, not very great. It was the difference of only one. It appears from Ex. K. 1/1 that the printed page number in the electoral roll from which the copy was given was 4, as No. 4 is given in the bracket after the embossed leaf No. 344. The same page No. 4 is on the page of the electoral roll produced by the petitioner, on which serial No. 174 is printed. The Returning Officer, Mr. Shambhu Dayal, who was examined in this case, has deposed that he looked at the entries in respect of Mr. Ram Singh in the electoral roll of Jaipur City "C" Constituency maintained in his office. From a comparison of the two sets of electoral rolls, which have been filed before us, we find that serial No. 174, which the petitioner states to be his, is to be found in the same setting in the same part of the electoral rolls of both the sets, inasmuch as the names above and the names below with their particulars are exactly the same. The printed page is also No. 4. The only difference is that in the one the embossed leaf is No. 344 and in the other it is 345. But neither on page 344 of the electoral roll produced by the petitioner, nor on page 345 of the electoral roll produced by Shri Daulat Ram, serial No. 174 is to be found. If, therefore, the Returning Officer had taken the least trouble, and had applied his mind in the least, it would not have been difficult to find out that serial No. 174 on page No. 345 of the electoral roll produced by the petitioner was the same as the serial No. 174 of the electoral roll filed from the Electoral Registration office through Daulat Ram. There could not have, therefore, been any doubt about the identity of the petitioner on a comparison of the two electoral rolls, and the Returning Officer had power to make a summary enquiry under section 36 (2) of the Act in order to be able to give his decision about the validity or invalidity of a nomination paper. If the Returning Officer, therefore, thought that he could not give a correct decision without holding further enquiry, he could have made such an enquiry, and the petitioner could have satisfied him by means of comparison of the two electoral rolls, his application for correction of age, Ex. P./7, and the order of the Electoral Registration Officer correcting his age, about his identity with serial No. 174 given in the nomination paper. But it appears that the Returning Officer had no doubt about the identity of the petitioner, and, therefore, he did not consider it necessary to hold any further enquiry into the matter. In his order on the nomination paper he does not say that he was doubtful about the identity of the petitioner. We do not, therefore, think that there was any doubt about the identity of the petitioner in the mind of the Returning Officer when he rejected his nomination paper.

It was argued by the learned counsel for the contesting respondent that the age given by the petitioner in his application for insertion of his name in the electoral roll as well as his address given therein were different from the entry in the electoral roll against serial No. 174. The age had, however, been corrected before the date of scrutiny, as appears from the order of the Electoral Registration Officer dated 26th November, 1951. On the point of discrepancy in age between that given in the electoral roll and that given in the application for addition of the petitioner's name, no doubt about the identity of the petitioner on the date of scrutiny could arise. Learned counsel for the contesting respondent argued that the name of the road against which serial No. 174 was entered in the electoral roll was different from the one given in the application of the petitioner for addition of his name. It was argued that this showed that the petitioner was not a voter whose name was entered at serial No. 174, and his identity could, therefore, be in doubt. It is true that the name of the road given in the application of the petitioner for addition of his name in the electoral roll is Ajmer Road. Ajmer Road has not been printed in the electoral roll against serial No. 174 given in the nomination paper. But this may be a mistake of print. About the serial No. 174 given by the petitioner the word Station Road has been printed as against serial No. 166. Thereafter neither the word 'Station Road' is printed upto serial No. 174, nor ditto marks are given. It cannot, therefore, be clearly said that Station Road is to be necessarily read along with serial No. 174. It is in the evidence of the petitioner that no voter of the name of Ram Singh son of Tara Singh was residing at Station Road. This evidence has not been rebutted, although it could be easily done if any other Ram Singh son of Tara Singh was resident of Jaipur City "C" Constituency, Hawali Shahar Garbi. Ajmer Road too is situated in Hawali Shahar Garbi, Jaipur City "C" Constituency. So it cannot be said that the petitioner was not a resident of Hawali Shahar Garbi. He made an application for inclusion of his name, and that application was accepted. It will be presumed that official acts are regularly performed and that his name was duly published in the electoral roll after the order of the revising authority. It also appears from the biggest electoral roll of Jaipur City "C" Constituency, Hawali

Shahar Garbi, which appears to be the main electoral roll by virtue of its size, that at No. 174 the name of Ram Singh son of Tara Singh is not entered, but it is the name of Badri son of Harnath. Serial No. 174, which is relied on by the petitioner finds place in the smallest electoral roll containing only about 200 names, which clearly shows that this list was prepared after certain other names were ordered to be entered in the electoral rolls, and which did not find place in the original electoral rolls. The petitioner also summoned the paper showing that the order regarding the inclusion of his name in the electoral roll was communicated to the press, but unfortunately it was not produced by the press. However, the presumption that the official act of giving effect to the order of the Revising Authority was duly performed, far from being rebutted, has strengthened by the material on the record, referred to above. It cannot, therefore, be said that there is any doubt about the identity of the petitioner. In our opinion the petitioner substantially complied with the provisions of rule 4 read with rule 2 (d) of the Rules. The issue is decided in favour of the petitioner, and against the contesting respondent.

Issues Nos. 4 and 6.—It has already been discussed in relation to issue No. 3 that serial No. 174 in the electoral roll of Jaipur City "C" Constituency, Hawali Shahar Garbi, which contains the names of 285 electors, relates to the petitioner. That part of the electoral roll has been marked as Ex. P/4. It cannot, therefore, be said that the petitioner was not a registered voter in the electoral roll Jaipur City "C" Constituency. The decision on issue No. 6 is also covered by the decision given in connection with issue No. 3, wherein it has been held that serial No. 174 in Ex. P/4 relates to the petitioner. Both these issues are, therefore, decided in favour of the petitioner and against the contesting respondent.

Issue No. 5.—The petitioner has examined himself and has also filed an application for admission to Maharaja's College, Jaipur, dated 13th July, 1944, from which it appears that his date of birth was 8th October, 1922. Similarly from his application dated 16th July, 1945, for admission to Third Year Arts, Maharaja's College, Jaipur, it appears that the same is his date of birth. These applications are Exs. R. 1/4 and R. 1/5. The age entry was corrected by the Electoral Registration Officer also. The petitioner has also stated on oath that he was more than 25 when he filed the nomination paper. There is absolutely no rebutting evidence on the record excepting the erroneous entry in the electoral roll, which was afterwards corrected. There can, therefore, be no doubt that the petitioner was more than 25 years of age at the time of filing his nomination paper. It was, however, argued that the correction ought not to have been made after the 25th of November, 1951, upto which time had been given by the Chief Electoral Officer, Government of Rajasthan, Jaipur, by the communication Ex. R.1/6 (a). It does not appear under what provision of law this time was limited. Under section 25(b) of the Representation of the People Act, 1950, the Electoral Registration Officer for a constituency has been given the power to amend or cause the roll to be amended on application made to him for the correction of an existing entry in the electoral roll of the constituency for the time being in force. It has not been laid down in the said section that such applications can be made only upto a certain time. Of course, the correction should be made before the scrutiny. Even if it is taken that the Chief Electoral Officer, Government of Rajasthan, had no such powers, 25th November, 1951, was a Sunday, and the application made on the next opening day, that is, 26th November, 1951, cannot be said to be made beyond time, under the circumstances of the case.

This issue is also decided in favour of the petitioner and against the contesting respondent.

Issue No. 7.—It was contended on behalf of the contesting respondent that the correction of the age of the elector No. 174 after the filing of the petitioner's nomination paper was invalid. We have been shown no law according to which it is invalid. The age given in the electoral roll was found to be incorrect when the petitioner filed his nomination paper, and so he made an application before the Electoral Registration Officer to correct the mistake. This was done before the date of scrutiny. As has been said in connection with issue No. 5, no special time limit is given in law for making such corrections. We are unable to hold that the correction of the age made by the Electoral Registration Officer after the filing of the petitioner's nomination paper was invalid.

The issue is decided in favour of the petitioner and against the contesting respondent.

Issue No. 8.—It was argued on behalf of the contesting respondent that independent candidates could not adopt a symbol of their first preference which was the symbol of any political party recognised by the Election Commission. The petitioner's evidence is that he was a Kisan Sabha candidate, and it is fully proved that the symbol of a cultivator winnowing grain was the symbol

given to Kisan Sabha, Rajasthan. He, therefore, did not require any permission for the adoption of this symbol as his first preference. It was further argued on behalf of the contesting respondent that the list of the Kisan Sabha candidates to the Rajasthan Legislative Assembly supplied by the Kisan Sabha, Rajasthan, does not mention the name of the petitioner among the Kisan Sabha candidates. That list was, however, supplied by the Rajasthan Kisan Sabha to the election authorities on the 29th of November, 1951, after the nomination paper of the petitioner had been rejected. It is Ex. R.1/6 (b). Obviously, therefore, that list could not contain the name of the petitioner as one of the candidates adopted by Rajasthan Kisan Sabha when he was off the field by virtue of the rejection of his nomination paper on the 28th of November, 1951. The omission of the petitioner's name, therefore, in that list is of no consequence against the evidence produced by the petitioner showing that he was adopted by the Rajasthan Kisan Sabha as one of its candidates. It was not necessary, under these circumstances, for him to obtain permission for adopting the symbol of the Rajasthan Kisan Sabha as the symbol of his first preference.

This issue is decided in favour of the petitioner and against the contesting respondent.

Issue No. 9.—This issue has not been pressed on behalf of the contesting respondent. We do not think the withdrawal of the deposit before the filing of the election petition could affect it. This issue is also decided in favour of the petitioner and against the contesting respondent.

Issue No. 10.—It was argued by the learned counsel for the contesting respondent that the seconder Rahama's signatures were obtained on the nomination paper by fraud, inasmuch as he was told that he was to sign the nomination form of a Congress candidate. For this there is the solitary statement of Rahama. There is the evidence of the petitioner himself as well as Shri Ram Rikh Beniwal, which shows that no fraud was practised on Rahama at the time of his signing the nomination paper as seconder of the nomination. This Rahama was well-known to Shri Ram Rikh Beniwal, and he had come to the place of Shri Ram Rikh Beniwal in which the latter's workshop and office as well as the office of Kisan Sabha were situated. It was argued that it is surprising that both the proposer as well as the seconder should have come to Jaipur on the date of the signing of the nomination paper. The presence of Rahama has been admitted by Rahama himself, and the evidence for the petitioner showed that Chiranji Lal was also present on that day. There is no evidence to show that Chiranjilal was not in Jaipur then. There is no wonder that Shri Ram Rikh Beniwal, who was interested in the petitioner who was a candidate of the Kisan Sabha, knowing the proposer and the seconder might have asked them to sign the nomination paper of the petitioner as proposer and seconder. Of course, had they not been available in Jaipur, the petitioner would have had to take the trouble of going to Shahpura or some other place within the Kotpalli constituency to have his nomination paper signed by a proposer and a seconder. But finding that the voters of that Constituency were in Jaipur, there was nothing strange in Ram Rikh Beniwal's getting his nomination paper signed by Chiranjilal and Rahama. It was argued that after the written statement was filed, the petitioner obtained the signatures of Rahama on a typed paper, Ex. P/4 (a), saying that he had signed the nomination form of the petitioner willingly, and this showed that the petitioner could obtain the signatures of Rahama on the nomination paper also under some misrepresentation or by practising fraud. First of all, it is not satisfactorily proved that the typed paper which Rahama had signed after the filing of the written statement by the contesting respondent was signed under any misrepresentation. But even if it be taken that the typed paper was signed by Rahama without knowing what its contents were, it does not show that the nomination paper also was signed under any misrepresentation or fraud. The nomination paper of the petitioner was not rejected on this ground, and no objection seems to have been taken in this behalf at the time of the scrutiny. Under the circumstances of the case, it was for the contesting respondent to prove definitely by very satisfactory evidence that the signatures of Rahama were obtained by fraud on the nomination paper of the petitioner. For this the evidence produced by the contesting respondent is very meagre and the evidence produced by the petitioner is weightier. The contesting respondent has not come into the witness box, and has not explained how he came to know that Rahama's signatures were obtained by fraud or misrepresentation on the nomination paper. It may be that Rahama afterwards along with other Mahomedans agreed to vote for the Congress, but it does not mean that at the time he signed the nomination paper he had any objection to the signing of the nomination paper of the candidate of Kisan Sabha. We are unable to hold that the signatures of Rahama were obtained by fraud, as alleged by the contesting respondent, or the nomination paper.

This issue is also decided in favour of the petitioner and against the contesting respondent.

Issue No. 1.—It has already been held in connection with issue No. 3 that the embossed leaf number which the petitioner gave in item No. 8 of the nomination paper was from one of the electoral rolls of Jaipur City "C" Constituency, Hawali Shahar Garbi. This electoral roll has been filed by the petitioner as Ex. P./4. Of course, the number of the embossed leaf on the electoral roll from which copy was given to the petitioner for production in court had serial No. 174 against which the name of Ram Singh son of Tara Singh was entered at embossed leaf No. 345. The electoral roll on which the aforesaid serial No. is printed at page 344 has also been produced before us from the Electoral Registration Office (City Magistrate's office) through Daulat Ram. It would appear from a perusal of that electoral roll that there is no serial No. 174 on the embossed leaf No. 345. It was, therefore, very easy for the Returning Officer to find out that the serial number 174 given by the petitioner in his nomination paper was the same which was to be found at page 344 of the electoral roll from which the copy was given to him. This copy is also on the record of this case and is Ex. R.I/1(a). Had he called upon the petitioner to satisfy him that he had given the serial number from the electoral roll of Jaipur City "C" Constituency, Hawali Shahar Garbi, he would have at once satisfied him from the electoral roll which he had in his possession. To our mind, the Returning Officer was too technical. Had he shown a little patience, the discrepancy on which he rejected the nomination paper would have been very easily explained. Section 36 (4) of the Act lays down that the Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character. The nomination paper was, therefore, improperly rejected on the ground that the page number of the entry given at serial No. 8 differed from the number of the page given in the certified copy produced by the petitioner.

The Issue is decided in favour of the petitioner and against the contesting respondent.

Issue No. 2.—There is a long string of decisions that in case the nomination paper of a candidate is improperly rejected, there will be a strong presumption in favour of the result of the election having been materially affected. The same view has been expressed by us in the two cases decided recently, viz.,

- 1 Pt. Lakshmi Chand vs. Shri Ladhu Ram Chodhri and others (Election Petition No. 8 of 1952), published in the Rajasthan Gazette, Extraordinary, Vol. V. No. 202, Part I, dated March 6, 1953, page 1067.
- 2 Pt. Harish Chandra vs. Raja Man Singh and others (Election petition No. 6 of 1952), published in the Rajasthan Gazette, Extraordinary, Vol. 5 No. 20, Part I, dated May 1, 1953, page 67.

Of course in the case of Pt. Harish Chandra vs. Raja Man Singh, quoted above, there was very strong evidence to rebut the presumption, and, therefore, it was held that the improper rejection did not materially affect the result of the election. In the present case, there is not an iota of evidence to rebut the presumption. After the nomination paper of the petitioner was rejected, all the other candidates whose nomination papers were accepted, excepting the contesting respondent, withdrew their nominations, and the field was left open for the contesting respondent to be elected without contest. There is no circumstance before us from which we might infer as to what would have been the result, if there had been a contest. Under the circumstances, we do not find that the initial presumption in favour of the petitioner has been rebutted. Our view is that, in the circumstances of the case, the result of the election was materially affected by the improper rejection of the petitioner's nomination paper.

The election petition succeeds, and the election from the Kotputli constituency to the Rajasthan Legislative Assembly is declared void with the consequence that the election of the contesting respondent Shri Hazari Lal becomes void. However, the petitioner had not fully complied with the direction given in note 6 of the nomination paper prescribed in Schedule II of the Rules, and although being a technical omission it was not sufficient for the rejection of his nomina-

tion paper in the circumstances of the case, yet the contesting respondent could well think that the letter of the note being in his favour, he could raise a valid defence on the points. We think, therefore, that under the circumstances it would be just and proper that parties do bear their own costs.

(Sd.) KUMAR K. SHARMA, *Chairman.*

(Sd.) A. N. KAUL, *Member.*

(Sd.) PARESH LAL SHOME, *Member.*

[No. 19/3/52-Elec.III/8795.]

By Order,
P. R. KRISHNAMURTHY, *Asstt. Secy*

